American Postal Workers Union, Local 299 *and* Kevin Hampton. 16–CB–256363

October 21, 2020

DECISION AND ORDER[1]

BY MEMBERS KAPLAN, EMANUEL, AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that American Postal Workers Union, Local 299 (the Respondent) has failed to file a timely or appropriate answer to the complaint. Upon a charge and amended charge filed by Kevin Hampton, an individual, on February 12 and April 6, respectively, the General Counsel issued a complaint and notice of hearing on June 16, 2020,[2] against the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent did not file an answer to the original complaint within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations.

The Region, by email dated July 13, advised the Respondent that no answer had been received and granted the Respondent until July 15 to file its answer. Then, by letter dated July 23, the Region advised the Respondent that unless an answer was received by July 30, it would file a motion for default judgment. On July 29, the Respondent, acting pro se, emailed the Region a document the Respondent described as "an official response to [the] complaint." The Region, in a July 30 voicemail, however, reminded the Respondent that it must file an answer to the complaint and offered the Respondent assistance doing so. By emails on July 31 and August 4, the Region again told the Respondent that it must file an answer to the complaint. Nevertheless, the Respondent failed to file an answer.

On August 14, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on August 19, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that a respondent "must specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial." It also provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint here affirmatively stated that unless an answer was received by June 30, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, as set forth above, the Region repeatedly reminded the Respondent of its failure to file an answer to the complaint (notwithstanding its July 29 email), and that, unless it filed an answer, the General Counsel would move for default judgment.

At the outset, we recognize that the Respondent does not appear to have legal representation in this proceeding. In determining whether to grant a motion for default judgment on the basis of a respondent's failure to file a sufficient or timely answer, the Board typically shows some leniency toward respondents who proceed without the benefit of counsel. See, e.g., *Clearwater Sprinkler System*, 340 NLRB 435, 435 (2003). Pro se status alone, however, does not establish good cause for failing to file a timely answer. *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003). And, generally, to get a determination on the merits, a pro se respondent must file a timely answer that can reasonably be construed as denying the substance of the complaint allegations, or provide a "good cause" explanation for failing to do so. See *Clearwater Sprinkler*, 340 NLRB at 435; see also *Carpentry Contractors*, 314 NLRB 824, 825 (1994).

Having duly considered this matter, we find default judgment is appropriate here. Under Section 102.20 of the Board's Rules, the Respondent's July 29 letter does not constitute a proper answer to the complaint, even considering the leniency afforded to pro se respondents.[3] The letter, primarily a recitation of facts pertaining to a class action "Line H" grievance, fails to address the factual or legal allegations of the complaint. And, although the letter generally claims that the complaint is "without merit," the Respondent does not deny the conduct that is the gravamen of the complaint—that it refused to provide represented employees with information about grievances filed on their behalf and/or copies of, or access to cop-

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] All dates hereafter are 2020 unless otherwise noted.

[3] If the letter were an appropriate answer, we would consider it to be timely, as the Respondent filed it within the time parameters set by the Region's July 23 warning letter. See *Primestar Construction Corp.*, 367 NLRB No. 25, slip op. at 2 (2018).

ies of, grievance records.[4] *Uwanta Linen Supply, Inc.*, 357 NLRB 538, 539 (2011) (general denial legally insufficient to rebut effectively admitted factual allegations in complaint). Further, we note that the Respondent ignored the Region's repeated reminders, and even its attempt to assist the Respondent in filing an appropriate answer. See *Active Metal Mfg.*, 316 NLRB 974, 974–975 (1995) (noting, in granting summary judgment against pro se respondent, repeated reminders to cure procedural defects in answer).

In sum, the Respondent failed to file any document, timely or untimely, that could reasonably be construed as an answer to the complaint. Accordingly, in the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (Employer) provides postal services for the United States and operates various facilities throughout the United States in performing that function, including facilities in Austin, Texas.

The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA), 39 U.S.C. § 101 et seq.

We find that the Respondent and the American Postal Workers Union (National Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Larry Roberts - Branch President

Derek Parker - Tour 2 Steward

Miles Jackson - Former Tour 2 Steward

At all material times, by virtue of Section 9(a) of the Act, the National Union has been the exclusive collective-bargaining representative of the following employees of the Employer (the unit):

INCLUDED: Maintenance Employees, Motor Vehicle Employees, Postal Clerks, Mail Equipment Shop Employees, Material Distribution Centers Employees, Operating Services and Facilities Services Employees.

EXCLUDED: Managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375 1201(2), all Postal Inspection Service employees, rural letter carriers, mail handlers and letter carriers.

At all material times, by virtue of Section 9(a) of the Act, the National Union has been the exclusive collective-bargaining representative of the unit and the National Union and the Employer have maintained and enforced a collective-bargaining agreement covering the terms and conditions of employment of the unit, including a grievance and arbitration procedure.

At all material times, the Respondent has been an agent for the National Union for various purposes including administering the collective-bargaining agreement described above, with respect to employees in the unit who are employed by the Employer at its facilities in Austin, Texas.

Since about September 2019, the Respondent has refused to provide represented employees with information about 'Line H' grievances it has filed on their behalf.

Since about September 2019, the Respondent has refused to provide represented employees with copies, or access to copies, of grievance records without raising a substantial countervailing interest in refusing to provide the documents or access to the documents.

CONCLUSIONS OF LAW

1. By engaging in the conduct described above, in connection with its designated servicing representative status as described above, the Respondent has represented unit employees in a manner that is arbitrary, discriminatory, or in bad faith and has breached the fiduciary duty it owes to the unit.

2. By the conduct described above, in connection with its representative status described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act and within the meaning of the PRA.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having

[4] We find the Respondent's attempt to excuse its refusal to provide the grievance-related information is not a legally sufficient defense to the complaint allegations. See *Hunts Point Multi-Service Center*, 356 NLRB 312, 313 (2010) (granting default judgment because pro se respondent's defense was not "legally sufficient").

found that the Respondent has breached its fiduciary duty of fair representation owed to unit employees and violated Section 8(b)(1)(A) by (i) refusing to provide represented employees with information about 'Line H' grievances filed on their behalf, and (ii) refusing to provide represented employees with copies or access to copies of grievance records, we shall order the Respondent to provide them with such information and with copies or access to copies of such records.

ORDER

The Respondent, American Postal Workers Union, Local 299, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to provide employees in the following unit (the unit) with information about 'Line H' grievances filed on their behalf:

> INCLUDED: Maintenance Employees, Motor Vehicle Employees, Postal Clerks, Mail Equipment Shop Employees, Material Distribution Centers Employees, Operating Services and Facilities Services Employees.
>
> EXCLUDED: Managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375 1201(2), all Postal Inspection Service employees, rural letter carriers, mail handlers and letter carriers.

(b) Refusing to provide unit employees with copies, or access to copies, of grievance records.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, promptly provide unit employees with information about 'Line H' grievances filed on their behalf.

(b) Upon request, promptly provide unit employees with copies of, or allow them access to copies of, grievance records in the Respondent's possession.

(c) Post at its union office, and all other places where notices to members are customarily posted, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 21, 2020

Marvin E. Kaplan, Member

William J. Emanuel, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

[5] If the facility involved in these proceedings is open and accessible to a substantial complement of employees and members, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees and members have regained access, and the notices may not be posted until a substantial complement of employees and members have regained access. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its members by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide employees in the following unit (the unit) with information about 'Line H' grievances filed on their behalf:

INCLUDED: Maintenance Employees, Motor Vehicle Employees, Postal Clerks, Mail Equipment Shop Employees, Material Distribution Centers Employees, Operating Services and Facilities Services Employees.

EXCLUDED: Managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375 1201(2), all Postal Inspection Service employees, rural letter carriers, mail handlers and letter carriers.

WE WILL NOT refuse to provide unit employees with copies of, or access to copies of, grievance records.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

WE WILL, upon request, promptly provide unit employees with information about 'Line H' grievances filed on their behalf.

WE WILL, upon request, promptly provide unit employees with copies of, or access to copies of, grievance records in our possession.

AMERICAN POSTAL WORKERS UNION, LOCAL 299

The Board's decision can be found at www.nlrb.gov/case/16-CB-256363 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.